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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

Civil Cause No. 4605

T. A. DRAKE, T. C. JACK BURROUGHS, AND WILLIAM HENRY MAGUIRE,

Plaintiffs,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Defendants,

NATIONAL BUS TRAFFIC ASSOCIATION, INC., WESTERN PASSENGER ASSOCIATION, TRANS-CONTINENTAL PASSENGER ASSOCIATION, SOUTHWESTERN PASSENGER ASSOCIATION, NEW ENGLAND PASSENGER ASSOCIATION, CENTRAL PASSENGER ASSOCIATION, AND TRUNK LINE PASSENGER ASSOCIATION,

Interveners.

STATEMENT AS TO THE JURISDICTION OF THE SUPREME COURT.

This is an appeal from a decree of the three-judge District Court dismissing the petition of Plaintiffs and the Intervening petition of Appellants herein, in which it was

sought to enjoin, set aside and annul an order of the Interstate Commerce Commission made in Ex Parte MC 35 by the said Interstate Commerce Commission, and the Supreme Court of the United States has jurisdiction upon direct appeal of this cause under Statute 220, October 22, 1913, C 32, 38, which statute specifically allows direct appeal to the Supreme Court from a decree of a three-judge district court in respect to actions attempting to set aside, enjoin or modify an order of the Interstate Commerce Commission.

CHARLES MARTIN KENNEDY,
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Attorneys for Appellants.

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FOR THE NORTHERN DISTRICT OF ILLINOIS,
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T. A. DRAKE, T. C. JACK BURROUGHS, AND WILLIAM HENRY MAGUIRE,

Plaintiffs,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Defendants.

MEMORANDUM.

The Court has read and considered the briefs of counsel filed herein and are of the opinion that the plaintiffs and the intervening petitioners, William Levin and others, are not entitled to the relief prayed in the complaint and the intervening petition should be dismissed. Drafts of findings of fact and conclusions of law may be submitted by the parties at their convenience.

SHERMAN MINTON,
Circuit Judge.
WILLIAM H. HOLLY,
District Judge.
M. L. IGOE,
District Judge.

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Interveners.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above action came on for hearing before a duly constituted three-judge court on September 19, 1942, plaintiffs, defendants, and interveners being represented by counsel,

and the cause was submitted upon pleadings, the order of the Interstate Commerce Commission entered March 21, 1942, the record before the Commission not being submitted and offered in evidence, and upon arguments and briefs of counsel. The court having considered the matters submitted and the arguments and briefs of the several counsel, enters its findings of fact and conclusions of law as follows:

Findings of Fact.

1. Under Section 203(b)(9) of the Interstate Commerce Act (U. S. C., Tit. 49, Sec. 303) the Congress of the United States exempted casual, occasional, or reciprocal interstate transportation of passengers, from regulations provided in the Act for motor carrier interstate commerce, unless and to the extent that the Interstate Commerce Commission should from time to time find that application of such regulations to such transportation would be necessary to carry out the policy of Congress as stated in the Act.

2. Upon petition of the National Bus Traffic Association, then an association of authorized interstate carriers, since incorporated, whose principal place of business is in Chicago, Ill., the Interstate Commerce Commission instituted proceedings to investigate casual, occasional, or reciprocal interstate transportation of passengers, to determine whether or not exemptions under said Section 203(b) (9) should be removed, and the extent, if any, to which they should be removed. The proceedings before and the record considered by the Interstate Commerce Commission is stated in the decision, report, and order of the Commission entered March 21, 1942, attached as Exhibits A and B to the Commission's answer herein, which said report and order are hereby adopted and made a part of those findings. The order of the Interstate Commerce Commission removed exemption of casual, occasional, and reciprocal interstate transportation of passengers under provisions of said Sec-

tion 203(b) (9), to the extent that such transportation is sold, offered for sale, provided, procured, furnished, or arranged for by a third person intermediary, who engages in making such transactions as a regular business or occupation. Under the Commission's order such casual, occasional, or reciprocal transportation remains exempt under said Section 203(b) (9) unless it is sold, offered for sale, procured, provided, furnished, or arranged for by or through the assistance of some third person engaged in such transactions as a business.

3. Plaintiff, T. A. Drake, is a resident of the State of Texas, the owner of an automobile, who in the past and who contemplates in the future making interstate trips in his automobile and procuring casual, occasional, or reciprocal interstate passengers on the basis of payment of a fixed sum or percent of cost of operation of car, through and by the aid of so-called "travel bureaus" upon payment of some cash fee to said "bureaus." The Interstate Commerce Commission order of March 21, 1942, when and if it goes into effect, will remove exemptions involved in such transportation and require plaintiff, T. A. Drake, when operating in the manner alleged in the complaint, to comply with the regulatory provisions of the Interstate Commerce Act.

4. Plaintiffs T. C. Jack Burroughs and William Henry Maguire are partners in the ownership and operation of a "travel bureau" in the State of California, and the said Burroughs has an interest in other "travel bureaus" in the State of Texas. Other intervenors herein are owners and operators of "travel bureaus" in the State of Texas. The business of these "travel bureaus" is to sell, provide, furnish, or arrange for casual, occasional, or reciprocal transportation, interstate and intrastate, and bring together automobile owners or drivers and prospective passengers,

for which service a fee, either fixed sum or percent of transportation charge, is collected. Such "travel bureaus" are not made subject to regulation under the Interstate Commerce Act and the Interstate Commerce Commission order of March 21, 1942, does not subject such "travel bureaus" to any regulation. Such "travel bureaus" are limited, under the Commission's order of March 21, 1942, to sale or arrangement of casual, occasional, or reciprocal transportation of passengers, for compensation, through owners and operators of motor vehicles, who have complied with regulations of the Interstate Commerce Act, and such "travel bureaus" in conducting such operations would be subject to provisions of Section 211 of said Act, (U. S. C., Tit. 49, Sec. 311) requiring a license to operate as a "Broker."

5. Plaintiff T. C. Jack Burroughs filed a petition to intervene and for reconsideration and rehearing in the proceedings Ex Parte MC 35, including the order entered March 21, 1942, with the Interstate Commerce Commission, which petition was denied by the Commission on July 31, 1942. Prior to entering the order of March 21, 1942, hearings were held at a number of places throughout the United States, notices of such hearings having been given wide publicity, including official notice to all so-called "travel bureaus" then known to the Commission. Proceedings, including hearings, were participated in by numerous interested parties, including carriers, travel agencies, chambers of commerce, state authorities, and so-called "travel bureaus." Testimony, arguments, and briefs of various parties to these proceedings were submitted to the Commission, including the so-called "travel bureaus." "Travel bureaus" participating in these proceedings filed petitions for reconsideration and rehearing which were denied by the Commission on July 31, 1942. Plaintiffs were permitted to introduce evidence at the court hearing, for the purpose of showing standing of plaintiffs to sue, and that the Interstate

Commerce Commission, in refusing to reopen and reconsider its order of March 21, 1942, had abused its discretion.

Conclusions of Law.

1. This court has jurisdiction of the action herein and its venue is within the jurisdiction of the court.

2. Casual, occasional, or reciprocal transportation of passengers, between one or more states, where the passenger pays a part of the expenses, whether in a fixed sum of money or percent of the cost of operation, to the owner or driver of an automobile, is interstate commerce.

3. The Constitution of the United States, Article 8, grants the full and exclusive power to Congress to regulate interstate commerce, which includes the power to regulate casual, occasional, or reciprocal interstate transportation of passengers for compensation. Under Section 203(b)(9) of the Interstate Commerce Act (U. S. C., Tit. 49, Sec. 303) Congress provided that casual, occasional, or reciprocal interstate transportation of passengers should be exempt from the regulations of the Interstate Commerce Act, unless and to the extent that the Interstate Commerce Commission should find that application of such regulations to such transportation would be necessary to carry out the policy of Congress stated in the Act. The delegation of authority to the Interstate Commerce Commission to remove the exemption of casual, occasional, or reciprocal interstate transportation of passengers and to place such transportation under the regulatory provisions of the Interstate Commerce Act, is a constitutional delegation of the power of Congress, with proper and definite criteria to be used by the Commission in its determination as to when and to what extent such transportation should be subjected to the regulations provided in the Act.

4. The Congress of the United States has enacted no statutes providing for the regulation of so-called "travel bureaus" whose business it is to sell, provide, furnish, or arrange for casual, occasional, or reciprocal interstate transportation for compensation, and the order of the Interstate Commerce Commission entered March 21, 1942, does not attempt or provide any regulation of such so-called "travel bureaus."

5. The order of the Interstate Commerce Commission entered March 21, 1942, which removes the exemption under said Section 203(b)(9) of caus-al, occasional, or reciprocal interstate transportation of passengers for compensation, where such transportation is sold, procured, provided, furnished, or arranged for by a third person intermediary who engages in making such transactions as a regular business or occupation, is within the statutory authority of the Commission, is supported by substantial evidence, and is lawful. Evidence introduced by plaintiffs, at the court hearing, failed to disclose any abuse of discretion on the part of the Commission in refusing to reopen its order of March 21, 1942, for reconsideration and rehearing.

6. In the proceedings Ex Parte MC 35, including the order entered therein on March 21, 1942, the Interstate Commerce Commission provided and granted to all parties to the said proceedings, and to the public generally, including Plaintiffs T. A. Drake, T. C. Jack Burroughs, and William Henry Maguire, a full and fair hearing, as is contemplated under the Constitution and laws of the United States. Denial of the petition on July 31, 1942, of Plaintiff T. C. Jack Burroughs to intervene and for reconsideration and rehearing of the order of March 21, 1942, did not constitute a denial of a full and fair hearing in the proceedings under Ex Parte MC 35.

7. The order of the Interstate Commerce Commission entered March 21, 1942, does not violate the Fifth Amendment

to the Constitution of the United States, and does not damage, destroy, or take the property of plaintiffs, without due process of law.

8. The complaint herein is without equity and should be dismissed at the cost of plaintiffs.

SHERMAN MINTON,
Judge of the 7th Circuit Court of Appeals.
WILLIAM H. HOLLY,
United States District Judge.
M. L. IGOE,
United States District Judge.

Order of the Court.

The above-entitled cause came on for hearing on September 19, 1942, plaintiffs, defendants, and intervenors being represented by counsel, and being submitted upon the pleadings, oral argument and briefs, and the court having entered its findings of fact and conclusions of law deciding that the complaint herein should be dismissed;

It Is Therefore Ordered and Adjudged, That the complaint herein be, and the same is hereby dismissed, at the cost of plaintiffs.

This, the 18th day of November, 1942.

SHERMAN MINTON,
Judge of the 7th Circuit Court of Appeals.
WILLIAM H. HOLLY,
United States District Judge.
M. L. IGOE,
United States District Judge.